

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 569**  
**99TH GENERAL ASSEMBLY**

4967H.02C

D. ADAM CRUMBLISS, Chief Clerk

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**AN ACT**

To repeal sections 456.1-103, 456.4-414, and 456.8-808, RSMo, and to enact in lieu thereof four new sections relating to trusts.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 456.1-103, 456.4-414, and 456.8-808, RSMo, are repealed and four  
2 new sections enacted in lieu thereof, to be known as sections 456.006, 456.1-103, 456.4-414, and  
3 456.8-808, to read as follows:

**456.006. 1. If a trust or custodial account constitutes a health savings account, as  
2 defined under 26 U.S.C. Section 223(d)(1), a trust may be created by any of the following:**

3 **(1) A transfer of money to the trustee or custodian holding such trust or custodial  
4 account;**

5 **(2) The documentation of the creation of such trust or custodial account in the  
6 records of the trustee or custodian holding such trust or custodial account; or**

7 **(3) The execution of a trust or custodial agreement with respect to such trust or  
8 custodial account.**

9 **2. In any case, a trust or custodial account shall be deemed to have been established  
10 on the first day on which the individual who is the beneficiary of such trust or custodial  
11 account is an eligible individual, as defined under 26 U.S.C. Section 223(c)(1), in that  
12 calendar year in which such trust or custodial account is created in accordance with this  
13 section.**

456.1-103. In sections 456.1-101 to 456.11-1106:

2 (1) "Action[~~]~~", with respect to an act of a trustee, includes a failure to act;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 3           (2) "Ascertainable standard" ~~[means]~~ , a standard relating to an individual's health,  
4 education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section  
5 2541(c)(1) of the Internal Revenue Code;
- 6           (3) "Beneficiary" ~~[means]~~ , a person that:  
7           (a) Has a present or future beneficial interest in a trust, vested or contingent; or  
8           (b) In a capacity other than that of trustee, holds a power of appointment over trust  
9 property;
- 10          (4) "Charitable trust" ~~[means]~~ , a trust, or portion of a trust, created for a charitable  
11 purpose described in subsection 1 of section 456.4-405;
- 12          (5) "Conservator" ~~[means]~~ , a person described in subdivision (3) of section 475.010.  
13 This term does not include a conservator ad litem;
- 14          (6) "Conservator ad litem" ~~[means]~~ , a person appointed by the court pursuant to the  
15 provisions of section 475.097;
- 16          (7) **"Directed trust", any trust, including a split interest trust, in which the trust  
17 instrument directs one or more powers over the trust to a person who is not serving as a  
18 trustee and is not a settlor or a beneficiary;**
- 19          (8) "Environmental law" ~~[means]~~ , a federal, state, or local law, rule, regulation, or  
20 ordinance relating to protection of the environment;
- 21          ~~[(8)]~~ (9) "Financial institution" ~~[means]~~ , a non-foreign bank, savings and loan or trust  
22 company chartered, regulated and supervised by the Missouri division of finance, the office of  
23 the comptroller of the currency, the office of thrift supervision, the National Credit Union  
24 Administration, or the Missouri division of credit union supervision. The term "non-foreign  
25 bank" shall mean a bank that is not a foreign bank within the meaning of subdivision (1) of  
26 section 361.005;
- 27          ~~[(9)]~~ (10) "Guardian" ~~[means]~~ , a person described in subdivision (7) of section 475.010.  
28 The term does not include a guardian ad litem;
- 29          ~~[(10)]~~ (11) "Interested persons" include beneficiaries and any others having a property  
30 right in or claim against a trust estate which may be affected by a judicial proceeding. It also  
31 includes fiduciaries and other persons representing interested persons. The meaning as it relates  
32 to particular persons may vary from time to time and must be determined according to the  
33 particular purposes of, and matter involved in, any proceeding;
- 34          ~~[(11)]~~ (12) "Interests of the beneficiaries" ~~[means]~~ , the beneficial interests provided in  
35 the terms of the trust;
- 36          ~~[(12)]~~ (13) "Internal Revenue Code" ~~[means]~~ , the United States Internal Revenue Code  
37 of 1986, as in effect on January 1, 2005, or as later amended;

38        [~~(13)~~] **(14)** "Jurisdiction[;]", with respect to a geographic area, includes a state or  
39 country;

40        [~~(14)~~] **(15)** "Person" [~~means~~] , an individual, corporation, business trust, estate, trust,  
41 partnership, limited liability company, association, joint venture, government; governmental  
42 subdivision, agency, or instrumentality; public corporation, or any other legal or commercial  
43 entity;

44        [~~(15)~~] **(16)** "Permissible distributee" [~~means~~] , a beneficiary who is currently eligible to  
45 receive distributions of trust income or principal, whether mandatory or discretionary;

46        [~~(16)~~] **(17)** "Power of withdrawal" [~~means~~] , a presently exercisable power of a  
47 beneficiary to withdraw assets from the trust without the consent of the trustee or any other  
48 person;

49        [~~(17)~~] **(18)** "Principal place of administration", of a trust is the trustee's usual place of  
50 business where the records pertaining to the trust are kept, or the trustee's residence if the trustee  
51 has no such place of business, unless otherwise designated by the terms of the trust as provided  
52 in section 456.1-108. In the case of cotrustees, the principal place of administration is, in the  
53 following order of priority:

54        (a) The usual place of business of the corporate trustee if there is but one corporate  
55 cotrustee;

56        (b) The usual place of business or residence of the trustee who is a professional fiduciary  
57 if there is but one such trustee and no corporate cotrustee; or

58        (c) The usual place of business or residence of any of the cotrustees;

59        [~~(18)~~] **(19)** "Professional fiduciary" [~~means~~] , an individual who represents himself or  
60 herself to the public as having specialized training, experience or skills in the administration of  
61 trusts;

62        [~~(19)~~] **(20)** "Property" [~~means~~] , anything that may be the subject of ownership, whether  
63 real or personal, legal or equitable, or any interest therein;

64        [~~(20)~~] **(21)** "Qualified beneficiary" [~~means~~] , a beneficiary who, on the date the  
65 beneficiary's qualification is determined:

66        (a) Is a permissible distributee;

67        (b) Would be a permissible distributee if the interests of the permissible distributees  
68 described in paragraph (a) of this subdivision terminated on that date; or

69        (c) Would be a permissible distributee if the trust terminated on that date;

70        [~~(21)~~] **(22)** "Record" [~~means~~] , information that is inscribed on a tangible medium or that  
71 is stored in an electronic or other medium and is retrievable in perceivable form;

72 [(22)] (23) "Revocable[;]", as applied to a trust, means that the settlor has the legal power  
73 to revoke the trust without the consent of the trustee or a person holding an adverse interest,  
74 regardless of whether the settlor has the mental capacity to do so in fact;

75 [(23)] (24) "Settlor" [means], a person, including a testator, who creates, or contributes  
76 property to, a trust. If more than one person creates or contributes property to a trust, each  
77 person is a settlor of the portion of the trust property attributable to that person's contribution  
78 except to the extent another person has the power to revoke or withdraw that portion pursuant  
79 to the terms of the trust;

80 [(24)] (25) "Sign" [means], with present intent to authenticate or adopt a record:

81 (a) To execute or adopt a tangible symbol; or

82 (b) To attach to or logically associate with the record an electronic sound, symbol, or  
83 process;

84 [(25)] (26) "Spendthrift provision" [means], a term of a trust which restrains either the  
85 voluntary or involuntary transfer or both the voluntary and involuntary transfer of a beneficiary's  
86 interest;

87 [(26)] (27) "State" [means], a state of the United States, the District of Columbia, Puerto  
88 Rico, the United States Virgin Islands, or any territory or insular possession subject to the  
89 jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal  
90 law or formally acknowledged by a state;

91 [(27)] (28) "Terms of a trust" [means], the manifestation of the settlor's intent regarding  
92 a trust's provisions as expressed in the trust instrument or as may be established by other  
93 evidence that would be admissible in a judicial proceeding;

94 [(28)] (29) "Trust instrument" [means], an instrument executed by the settlor that  
95 contains terms of the trust, including any amendments thereto;

96 [(29)] (30) "Trustee" includes an original, additional, and successor trustee, and a  
97 cotrustee.

456.4-414. 1. After notice to the qualified beneficiaries, the trustee of a trust consisting  
2 of trust property having a total value less than [~~one hundred thousand~~] **two hundred fifty**  
3 **thousand** dollars may terminate the trust if the trustee concludes that the value of the trust  
4 property is insufficient to justify the cost of administration.

5 2. The court may modify or terminate a trust or remove the trustee and appoint a  
6 different trustee if it determines that the value of the trust property is insufficient to justify the  
7 cost of administration.

8 3. Upon termination of a trust under this section, the trustee shall distribute the trust  
9 property in a manner consistent with the purposes of the trust.

10 4. This section does not apply to an easement for conservation or preservation.

456.8-808. 1. While a trust is revocable, the trustee may follow a direction of the settlor  
2 that is contrary to the terms of the trust.

3 2. A trust instrument may provide for the appointment of a trust protector. For purposes  
4 of this section, a "trust protector", whether referred to in the trust instrument by that name or by  
5 some other name, is a person, other than the settlor, a trustee, or a beneficiary, who is expressly  
6 granted in the trust instrument one or more powers over the trust.

7 3. A trust protector appointed in the trust instrument shall have only the powers granted  
8 to the trust protector by the express terms of the trust instrument, and a trust protector is only  
9 authorized to act within the scope of the authority expressly granted in the trust instrument.  
10 Without limiting the authority of the settlor to grant powers to a trust protector, the express  
11 powers that may be granted include, but are not limited to, the following:

12 (1) Remove and appoint a trustee or name a successor trustee or trust protector;

13 (2) Modify or amend the trust instrument to:

14 (a) Achieve favorable tax status or respond to changes in the Internal Revenue Code or  
15 state law, or the rulings and regulations under such code or law;

16 (b) Reflect legal changes that affect trust administration;

17 (c) Correct errors or ambiguities that might otherwise require court construction; or

18 (d) Correct a drafting error that defeats a grantor's intent;

19 (3) Increase, decrease, modify, or restrict the interests of the beneficiary or beneficiaries  
20 of the trust;

21 (4) Terminate the trust in favor of the beneficiary or beneficiaries of the trust;

22 (5) Change the applicable law governing the trust and the trust situs; or

23 (6) Such other powers as are expressly granted to the trust protector in the trust  
24 instrument.

25 4. Notwithstanding any provision in the trust instrument to the contrary, a trust protector  
26 shall have no power to modify a trust to:

27 (1) Remove a requirement from a trust created to meet the requirements of 42 U.S.C.  
28 Section 1396p(d)(4) to pay back a governmental entity for benefits provided to the permissible  
29 beneficiary of the trust at the death of that beneficiary; or

30 (2) Reduce or eliminate an income interest of the income beneficiary of any of the  
31 following types of trusts:

32 (a) A trust for which a marital deduction has been taken for federal tax purposes under  
33 Section 2056 or 2523 of the Internal Revenue Code or for state tax purposes under any  
34 comparable provision of applicable state law, during the life of the settlor's spouse;

35 (b) A charitable remainder trust under Section 664 of the Internal Revenue Code, during  
36 the life of the noncharitable beneficiary;

37 (c) A grantor retained annuity trust under Section 2702 of the Internal Revenue Code,  
38 during any period in which the settlor is a beneficiary; or

39 (d) A trust for which an election as a qualified Sub-Chapter S Trust under Section  
40 1361(d) of the Internal Revenue Code is currently in place.

41 5. Except to the extent otherwise provided in a trust instrument specifically referring to  
42 this subsection, the trust protector shall not exercise a power in a way that would result in a  
43 taxable gift for federal gift tax purposes or cause the inclusion of any assets of the trust in the  
44 trust protector's gross estate for federal estate tax purposes.

45 6. Except to the extent otherwise provided in the trust instrument and in subsection 7 of  
46 this section, and notwithstanding any provision of sections 456.1-101 to 456.11-1106 to the  
47 contrary:

48 (1) A trust protector shall act in a fiduciary capacity in carrying out the powers granted  
49 to the trust protector in the trust instrument, and shall have such duties to the beneficiaries, the  
50 settlor, or the trust as set forth in the trust instrument. A trust protector is not a trustee, and is  
51 not liable or accountable as a trustee when performing or declining to perform the express  
52 powers given to the trust protector in the trust instrument. A trust protector is not liable for the  
53 acts or omissions of any fiduciary or beneficiary under the trust instrument;

54 (2) A trust protector is exonerated from any and all liability for the trust protector's acts  
55 or omissions, or arising from any exercise or nonexercise of the powers expressly conferred on  
56 the trust protector in the trust instrument, unless it is established by a preponderance of the  
57 evidence that the acts or omissions of the trust protector were done or omitted in breach of the  
58 trust protector's duty, in bad faith or with reckless indifference;

59 (3) A trust protector is authorized to exercise the express powers granted in the trust  
60 instrument at any time and from time to time after the trust protector acquires knowledge of their  
61 appointment as trust protector and of the powers granted;

62 (4) A trust protector is entitled to receive, from the assets of the trust for which the trust  
63 protector is acting, reasonable compensation, and reimbursement of the reasonable costs and  
64 expenses incurred, in determining whether to carry out, and in carrying out, the express powers  
65 given to the trust protector in the trust instrument;

66 (5) A trust protector is entitled to receive, from the assets of the trust for which the trust  
67 protector is acting, reimbursement of the reasonable costs and expenses, including attorney's  
68 fees, of defending any claim made against the trust protector arising from the acts or omissions  
69 of the trust protector acting in that capacity unless it is established by clear and convincing  
70 evidence that the trust protector was acting in bad faith or with reckless indifference; and

71 (6) The express powers granted in the trust instrument shall not be exercised by the trust  
72 protector for the trust protector's own personal benefit.

73           7. If a trust protector is granted a power in the trust instrument to direct, consent to, or  
74 disapprove a trustee's actual or proposed investment decision, distribution decision, or other  
75 decision of the trustee required to be performed under applicable trust law in carrying out the  
76 duties of the trustee in administering the trust, then only with respect to such power, excluding  
77 the powers identified in subsection 3 of this section, the trust protector shall have the same duties  
78 and liabilities as if serving as a trustee under the trust instrument.

79           8. A trustee shall carry out the written directions given to the trustee by a trust protector  
80 acting within the scope of the powers expressly granted to the trust protector in the trust  
81 instrument. Except in cases of bad faith or reckless indifference on the part of the trustee, or as  
82 otherwise provided in the trust instrument, the trustee shall not be liable for any loss resulting  
83 directly or indirectly from any act taken or omitted as a result of the written direction of the trust  
84 protector or the failure of the trust protector to provide consent. Except as otherwise provided  
85 in the trust instrument, the trustee shall have no duty to monitor the conduct of the trust  
86 protector, provide advice to or consult with the trust protector, or communicate with or warn or  
87 apprise any beneficiary concerning instances in which the trustee would or might have exercised  
88 the trustee's own discretion in a manner different from the manner directed by the trust protector.

89           9. **If a directed trust reserves to a person or vests in an advisory or investment**  
90 **committee authority to direct the making or retention of any investment, to the exclusion**  
91 **of the trustee or trustees, the excluded trustee or trustees shall not be liable, individually**  
92 **or as a trustee, for any loss resulting from the making or retention of any investment**  
93 **pursuant to such direction.**

94           10. Except to the extent otherwise expressly provided in the trust instrument, the trust  
95 protector shall be entitled to receive information regarding the administration of the trust as  
96 follows:

97           (1) Upon the request of the trust protector, unless unreasonable under the circumstances,  
98 the trustee shall promptly provide to the trust protector any and all information related to the trust  
99 that may relate to the exercise or nonexercise of a power expressly granted to the trust protector  
100 in the trust instrument. The trustee has no obligation to provide any information to the trust  
101 protector except to the extent a trust protector requests information under this section;

102           (2) The request of the trust protector for information under this section shall be with  
103 respect to a single trust that is sufficiently identified to enable the trustee to locate the records  
104 of the trust; and

105           (3) If the trustee is bound by any confidentiality restrictions with respect to an asset of  
106 a trust, a trust protector who requests information under this section about such asset shall agree  
107 to be bound by the confidentiality restrictions that bind the trustee before receiving such  
108 information from the trustee.

109           ~~[10.]~~ **11.** A trust protector may resign by giving thirty days' written notice to the trustee  
110 and any successor trust protector. A successor trust protector, if any, shall have all the powers  
111 expressly granted in the trust instrument to the resigning trust protector unless such powers are  
112 expressly modified for the successor trust protector.

113           ~~[11.]~~ **12.** A trust protector of a trust having its principal place of administration in this  
114 state submits personally to the jurisdiction of the courts of this state during any period that the  
115 principal place of administration of the trust is located in this state and the trust protector is  
116 serving in such capacity.

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